



CONTRACT LAW DIVISION

Office of the Assistant General Counsel for Finance & Litigation



Biweekly Report - Period Ending February 1, 1997

ACI, Inc. v. DOC—GAO-B-270570

The protest of American Combustion Industries, Inc., ("ACI") was heard before the GAO on January 30 and 31. ACI's witnesses attempted to show that the (1) the solicitation required that an item of equipment that was being offered by the awardee had to be approved prior to award, and that (2) the Government was required, but did not engage in meaningful discussions dealing, *inter alia*, with negative information on past performance from references supplied by ACI. The awardee's President, testified that it was clear that the item of equipment being offered was subject to approval during a submittal process after award. This was NIST's position, as explained by the CO. Members of the technical evaluation committee described the discussions to show that these discussions were meaningful, and the bases upon which the best value determination was performed. The GAO advised the parties that this case will, in all probability, represent the first case defining the scope of the Government's responsibility to specifically discuss negative past performance information during discussions, where the reference was provided by the party claiming the failure to conduct meaningful discussions. Ken Lechter has the case.

APEC Tariff Database

We are still assisting ITA in attempting to negotiate an agreement with Federal Express to put APEC member countries trade tariff on an Internet site. Thus far, the most important outstanding issue is who will bear potential liability. FedEx is insisting that APEC indemnify it against all lawsuits. We have advised ITA and FedEx that inasmuch as the USG funds a certain percentage of APEC's budget that such an indemnification clause appeared to violate the Antideficiency Act. Mark Langstein and Ken Lechter are advising.

Trade Mission Cancellation

We completed a memorandum on the Department's exposure to suit over the Secretary-designate's announced position to place a near-term moratorium on trade missions. We have advised that although there is some possible exposure, the likelihood of recovery by prospective mission participants is remote. Alden Abbott, Jerry Walz, Mark Langstein & Ken Lechter all had a piece.

North Florida Shipyard, Inc. v. DOC

We filed the Rule 104 Appeal file in this case on January 17. Catherine Shea and Ken Lechter have the case.

Federal Courts Bid Protests

Jerry Walz and Mark Langstein have participated in several meetings of committees set up by OMB to grapple with procedural and substantive issues raised by the recent statutory grant of bid protest jurisdiction to the Court of Federal Claims and the US District Courts. We have also provided written input to one of the committees on the issues of laches, stays and time-to-decision.

2000 Census Advertising Procurement

We have been informed that this procurement will no longer be a CONOPS pilot project. However, the procurement team has been urged to use streamlined procedures whenever possible within the framework of existing law and regulations. We will continue to closely assist the Bureau in this \$100 million acquisition. Fred Kopatch is advising.

Brown Bag—Franchising

The next CLD/OAM brown bag lunch on February 19th will be devoted to franchising issues. Comments and issues may be submitted via the ContractsGC mail list. Send to contractsgc@liststar.ogc.doc.gov.

Actions Completed/Received during Period

	From 1/19/97	To 2/1/97
	Received	Completed
BXA	1	0
NIST	6	6
NOAA	6	3
NTIS	1	1
PTO	4	3
Total	18	13

Contract Law Division—Client Workload Period Ending 02/01/97

